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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
HAWAII ELECTRIC LIGHT COMPANY, INC.)  
For Approval of Rate Increases and )  
Revised Rate Schedules. )  
\_\_\_\_\_)

DOCKET NO. 99-0207

ORDER NO. 19825

Filed Nov. 27, 2002  
At 9 o'clock A. .M.

Kris W. Lee  
for Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

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ORDER

I.

A.

This docket arises out of an application for approval of a general rate increase and revisions to certain rate schedules, filed by HAWAII ELECTRIC LIGHT COMPANY (HELCO) on October 25, 1999. In addition to HELCO: (1) the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy (Consumer Advocate), is a party; and (2) CITIZENS COMMUNICATIONS COMPANY, dba THE GAS COMPANY (TGC), is a participant, limited to the standby rider issue.

On January 19 and 26, 2000, the commission held public hearings on HELCO's application in Kailua-Kona and Hilo, respectively. By Decision and Order No. 18365, filed on February 8, 2001, the commission issued its decision on HELCO's request for a general rate increase. Thereafter, by Decision and Order No. 18575, filed on June 1, 2001, the commission approved the standby service rider (aka Rider A) agreed upon between HELCO and the Consumer Advocate.<sup>1</sup> The commission's approval was

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<sup>1</sup>TGC did not join in the stipulation.

subject to: (1) certain reporting requirements imposed on HELCO; and (2) "future modifications to HELCO's Rider A, if necessary, following the commission's review of HELCO's report."

On August 7, 2002, HELCO filed its standby Rider A report (HELCO's report), in compliance with Decision and Order No. 18575 and Order No. 19493.<sup>2</sup>

B.

On November 6, 2002, HESS MICROGEN, LLC (Movant) filed dual motions seeking an enlargement of time and commission approval to intervene or participate on the standby rider issue. Movant filed its motion in accordance with Hawaii Revised Statutes chapter 269 and Hawaii Administrative Rules (HAR) §§ 6-61-23, 6-61-41, 6-61-55, and 6-62-56. On November 18, 2002, HELCO filed its memorandum in opposition to the dual motions.

This order addresses the two respective motions filed by Movant.

II.

A.

Movant is a wholly-owned subsidiary of Amerada Hess Corporation. Movant states that: (1) it is an industry leader in packaged cogeneration systems; and (2) it is in the business of manufacturing cogeneration equipment and operating cogeneration systems at its clients' facilities, including hotels, resorts,

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<sup>2</sup>Order No. 19493, filed on July 31, 2002, extended the deadline to file the report, from July 31 to August 7, 2002, pursuant to HELCO's request.

supermarkets, commercial buildings, and light to medium industries.

Movant represents that, in the State of Hawaii:

1. It is currently serving seven facilities, three of which are located on the island of Hawaii.

2. It is in the process of serving four additional facilities statewide in the near future.

3. It has several outstanding cogeneration proposals to potential clients.

#### B.

In seeking relief with the commission, Movant contends:

1. HELCO's report identifies three projects that are subject to Rider A: (A) The Orchid At Mauna Lani; (B) Regency at Hualalai; and (C) University of the Nations.

2. Movant is the only combined heat and power (CHP) developer that is serving these three projects.

3. HELCO's report sets forth specific facts and allegations about the CHP developer. These statements by HELCO are not true.

4. Previously, Movant did not seek to intervene "because it never expected HELCO to make less than accurate allegations in regards to its business transactions with Movant and in regards to Movant's CHP units in operation on the Big Island." Now, however, HELCO has "literally pulled the Movant into this proceeding" by the filing of its report.

5. Movants must have the "opportunity to defend itself, to clarify, correct, and interpret the data in the HELCO

Report, and to correct the erroneous and misleading impressions the HELCO Report has left on the Record."

6. No other means, other than intervention or participation, exists for Movant to clarify the record and protect its interests.

Movant seeks to intervene or participate "for the sole purpose of responding to the HELCO Report and provide the Commission with the full picture." In lieu of intervention or participation, Movant proposes several alternatives:

1. Allowing it to respond to HELCO's report through a filing by TGC.

2. The opening of a new commission docket on HELCO's standby service charge, or a generic docket on standby charges and customer retention discounts, and naming Movant as a party therein.

3. Striking HELCO's report from the docket record.

C.

HELCO states that: (1) it presently has three customers on Rider A; and (2) Movant is the developer of the CHP units for these three customers.

That said, HELCO asserts that: (1) the deadline to file a motion to intervene or participate was February 7, 2000, and Movant did not file its dual motions until more than three years later; and (2) Movant has failed to show any "excusable neglect" to warrant the granting of additional time to file its motion to intervene or participate.

Moreover, in opposing the granting of intervenor or participant status, HELCO contends:

1. Docket No. 99-0207 is not an ongoing, contested case proceeding. The evidentiary hearing is completed, and the commission has also completed its adjudication of all the issues in this docket. The evidentiary record was compiled prior to the issuance of the commission's decisions.

2. HELCO filed its post-proceeding report on August 7, 2002, in compliance with Decision and Order No. 18575 and Order No. 19493. There is no ongoing, contested case proceeding in which Movant can intervene or participate.

3. Movant was readily aware of Docket No. 99-0207, "as indicated by statements at the public hearing," but did not seek to timely intervene or participate at that time. Instead, Movant subsequently submitted written, direct testimony through TGC, on the standby rider issue.

4. Movant is the developer of the CHP units for all three HELCO customers. Thus, HELCO is not "targeting" Movant. Rather, it is simply reporting the required information to the commission, to the extent the subject information is available to HELCO.

5. HELCO categorically denies Movant's allegations that HELCO's report contains erroneous or misleading information and data on Movant and its operations. Instead, the reported information accurately presents the available, metered data.

6. Movant, as a non-party, has no standing to seek commission relief by striking HELCO's report from the record.

As an alternative, HELCO reasons that, since Docket No. 99-0207 is not an ongoing, contested case proceeding, the commission "could" accept metered data from Movant with respect to its three DG units, without granting intervenor or participant status. HELCO attaches certain conditions to this proposed alternative.<sup>3</sup>

### III.

For good cause shown, HAR § 6-61-23(a)(2) authorizes the commission to enlarge the period of time to seek intervention or participant status "where the failure to [timely] act was the result of excusable neglect." Meanwhile, HAR § 6-61-55(d) provides that "intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented." Moreover, intervention as a party in a proceeding before the commission is not a right; rather, it is a matter resting within the commission's discretion. In re Hawaiian Elec. Co., Inc., 56 Haw. 260, 535 P.2d 1102 (1975).

HELCO filed its application on October 25, 1999. At the public hearing in Hilo on January 26, 2000, various entities testified on HELCO's proposed Rider A.<sup>4</sup> The deadline for

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<sup>3</sup>If the commission allows Movant to submit this data, Movant must be required to: (1) comply with the metering requirements set forth in HELCO's Rider A; (2) provide HELCO with continuing access, on a monthly basis, to Movant's metered data for the three CHP units referred to in HELCO's report; and (3) provide HELCO with "data on a continuing basis regarding the electricity that [Movant] supplies to the same customers for HELCO to have equal access to data."

<sup>4</sup>They include: TGC; Island Energy Systems, Inc.; and The Orchid at Mauna Lani. In addition, the University of the Nations

interested persons to timely move to intervene or participate was February 7, 2000.<sup>5</sup> Other than TGC, no other persons timely moved to intervene or participate. Movant had a full opportunity to timely file a motion to intervene or participate.

Upon review, it is evident that Movant makes no claim or showing of excusable neglect amounting to good cause shown, to warrant the granting of additional time, from February 7, 2000 to November 6, 2002, to file its motion to intervene or participate.<sup>6</sup> Accordingly, the commission will deny the motion for an enlargement of time. This denial, in turn, renders moot the underlying motion to intervene or participate.

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submitted a brochure, entitled "Strategic Resource Solutions installs a 120kw packaged cogeneration module at the University of the Nations campus in Kona, Hawaii."

TGC testified in-depth on: (A) the Island of Hawaii's potential for alternative energy (cogeneration and fuel cells); (B) Strategic Resource Solutions (SRS), Inc.'s installation of cogeneration units at the University of the Nations; and (C) SRS, Inc.'s proposed installation of additional cogeneration units at other locations, including The Orchid at Mauna Lani. According to HELCO's report, the University of the Nations and The Orchid at Mauna Lani's cogeneration units were installed in April 2000 and April 2001, respectively.

<sup>5</sup>See HAR § 6-62-57(1); and notices of public hearing.

<sup>6</sup>Movant also asserts that it had no reason to intervene or participate until after HELCO filed its report. In response, the commission notes that, under this scenario, Movant waited three months, i.e., until November 6, 2002, to file its dual motions.



#### IV.

At page 3 of its underlying motion, Movant takes issue with four statements cited by HELCO in its redacted report, relating to the CHP units installed by Movant.<sup>7</sup>

Movant, in this limited instance and at its option, may submit to TGC, in letter format, a response to the four statements at issue in HELCO's redacted report. Movant is encouraged to: (1) limit its response to facts and data, **no** arguments; and (2) submit its response to TGC within 10 days from the date of the instant order. If submitted, TGC, as a participant with similar interests in this proceeding as Movant's,<sup>8</sup> shall transmit Movant's response to the commission, with copies to the other parties, within 3 days of receipt.

Under this one-time scenario, the commission makes clear that the movant, Hess Microgen, LLC, is neither a party nor a participant in this proceeding.

#### V.

##### THE COMMISSION ORDERS:

1. Hess Microgen, LLC's motion for an enlargement of time to intervene or participate, filed on November 7, 2002, is denied.

2. Hess Microgen, LLC's motion to intervene or participate, filed on November 7, 2002, is rendered moot.


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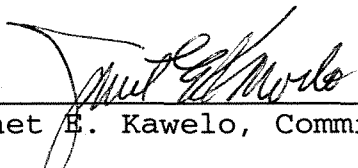
<sup>7</sup>See motion to intervene or participate, at page 3, paragraphs numbered 1 - 3, footnotes 4 - 7.

<sup>8</sup>See footnote 4, supra.

DONE at Honolulu, Hawaii this 27th day of November ,  
2002.


PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Wayne H. Kimura, Chairman

By   
Janet E. Kawelo, Commissioner

By (RECUSED)  
Gregg J. Kinkley, Commissioner

APPROVED AS TO FORM:

  
Michael Azama  
Commission Counsel

99-0207OHM.sl

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No.19825 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

CLIFFORD K. HIGA, ESQ.  
BRUCE A. NAKAMURA, ESQ.  
KOBAYASHI, SUGITA & GODA  
First Hawaiian Center  
999 Bishop Street, Suite 2600  
Honolulu, HI 96813

WARREN H. W. LEE, PRESIDENT  
HAWAII ELECTRIC LIGHT COMPANY, INC.  
P. O. Box 1027  
Hilo, HI 96721-1027

WILLIAM A. BONNET  
VICE PRESIDENT, GOVERNMENT AND COMMUNITY AFFAIRS  
HAWAIIAN ELECTRIC COMPANY, INC.  
P. O. Box 2750  
Honolulu, HI 96840

THOMAS W. WILLIAMS, JR., ESQ.  
PETER Y. KIKUTA, ESQ.  
GOODSILL, ANDERSON, QUINN & STIFEL  
1800 Alii Place  
1099 Alakea Street  
Honolulu, HI 96813

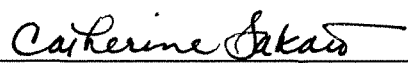
GAIL S. GILMAN  
STATEWIDE MANAGER, REGULATORY AFFAIRS  
THE GAS COMPANY  
DIVISION OF CITIZENS COMMUNICATIONS COMPANY  
P. O. Box 3000  
Honolulu, HI 96802-3000

CERTIFICATE OF SERVICE - Continued

ALAN M. OSHIMA, ESQ.  
MICHAEL H. LAU, ESQ.  
KENT D. MORIHARA, ESQ.  
OSHIMA, CHUN, FONG & CHUNG  
841 Bishop Street, Suite 400  
Honolulu, HI 96813

SANDRA-ANN Y.H. WONG, ESQ.  
1050 Bishop Street, #504  
Honolulu, HI 96813

Attorney for HESS MICROGEN, LLC

  
for Karen Higashi

DATED: November 27, 2002